

1 JAMES P. BENNETT (CA SBN 65179)  
JBennett@mofo.com  
2 RACHEL KREVANS (CA SBN 116421)  
RKrevans@mofo.com  
3 BARBARA BARATH (CA SBN 268146)  
BBarath@mofo.com  
4 MORRISON & FOERSTER LLP  
425 Market Street  
5 San Francisco, California 94105-2482  
Telephone: 415.268.7000  
6 Facsimile: 415.268.7522  
7 Attorneys for Defendant  
APPLE INC.  
8  
9

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 ZEROCLICK, LLC, a Texas limited liability  
company,

14 Plaintiff,

15 v.

16 APPLE INC., a California corporation,

17 Defendant.  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No. 3:15-CV-04417-JST

**ESI STIPULATION AND  
[PROPOSED] ORDER**

Date: January 13, 2016  
Time: 2:00 PM  
Place: Courtroom 9, 19th Floor  
Judge: Jon S. Tigar

1 Upon the stipulation of the parties, the Court ORDERS as follows:

2 1. This Order supplements all other discovery rules and orders. It streamlines  
3 Electronically Stored Information (“ESI”) production to promote a “just, speedy, and inexpensive  
4 determination of this action, as required by Federal Rule of Civil Procedure 1.”

5 2. **Proportionality and ESI Guidelines.** To further the application of the  
6 proportionality standard set forth in Fed. R. Civ. P. 26(b)(2)(C), requests for production of ESI and  
7 related responses should be reasonably targeted, clear, and as specific as practicable. Where the  
8 discovery request is potentially burdensome to the responding party, the parties should consider  
9 options such as staging discovery and sampling, in an attempt to reduce the costs of production.

10 3. As in all cases, costs may be shifted for disproportionate ESI production requests  
11 pursuant to Federal Rule of Civil Procedure 26. Likewise, a party’s nonresponsive or dilatory  
12 discovery tactics are cost-shifting considerations. A party’s meaningful compliance with this  
13 Order and efforts to promote efficiency and reduce costs will be considered in cost-shifting  
14 determinations.

15 4. The parties are expected to comply with the District’s E-Discovery Guidelines  
16 (“Guidelines”) and are encouraged to employ the District’s Model Stipulated Order Re: the  
17 Discovery of Electronically Stored Information and Checklist for Rule 26(f) Meet and Confer  
18 regarding Electronically Stored Information.

19 5. **General ESI.** General ESI production requests under Federal Rules of Civil  
20 Procedure 34 and 45 shall not include email or other forms of electronic correspondence  
21 (collectively “Email”). The limits discussed in Paragraphs 3 to 5 above shall apply to General  
22 ESI. Nothing contained herein, however, shall limit any party’s obligation to disclose any  
23 document that that party intends to rely upon to support any claim or defense, regardless of  
24 whether such document constitutes ESI, General ESI or Email.

25 6. **Email.** To obtain Email, parties must propound specific requests. Email  
26 production requests shall only be propounded for specific issues, rather than general discovery of  
27 a product or business.  
28

1           7.       Email production requests shall be phased to occur after the parties have  
2       exchanged initial disclosures and basic documentation about the patents, the prior art, the accused  
3       instrumentalities, and the relevant finances. While this provision does not require the production  
4       of such information, the Court encourages prompt and early production of this information to  
5       promote efficient and economical streamlining of the case.

6           8.       Email production requests shall identify the custodian, search terms, and time  
7       frame. The parties shall cooperate to identify the proper custodians, proper search terms and  
8       proper timeframe as set forth in the Guidelines. The parties shall make good faith efforts to  
9       identify appropriate email custodians and produce email on the agreed upon schedule, but reserve  
10      the right to seek email from additional email custodians identified through discovery.

11          9.       The parties shall meet and confer to reach agreement on the list of custodians for  
12      purposes of collection, review and production of Email. In connection with the meet and confer  
13      process, each party shall provide a proposed list of individual custodians who are knowledgeable  
14      about and were involved with the core issues or subjects in this case (e.g., the asserted patents, the  
15      development, design and operation of the accused products, and sales, marketing and other  
16      damages-related information for the accused products). The parties then shall meet and confer to  
17      reach agreement on document custodians. Each requesting party shall limit its Email production  
18      requests to a total of five custodians per producing party for all such requests. The parties may  
19      jointly agree to modify this limit without the Court's leave. The Court shall consider contested  
20      requests for additional custodians, upon showing a distinct need based on the size, complexity,  
21      and issues of this specific case. Cost-shifting may be considered as part of any such request.  
22      Email, shall be collected for each individual custodian from the personal computers, network  
23      resources, and other electronic devices that those individuals use for work purposes.

24          10.      The parties shall also meet and confer to reach agreement on search terms to be  
25      used for electronic searches of the files from those custodians. Each requesting party shall limit  
26      its Email production requests to a total of five search terms per custodian per party. The parties  
27      may jointly agree to modify this limit without the Court's leave. The Court shall consider  
28      contested requests for additional search terms per custodian, upon showing a distinct need based

on the size, complexity, and issues of this specific case. The Court encourages the parties to confer on a process to test the efficacy of the search terms. The search terms shall be narrowly tailored to particular issues. Indiscriminate terms, such as the producing company's name or its product name, are inappropriate unless combined with narrowing search criteria that sufficiently reduce the risk of overproduction. A conjunctive combination of multiple words or phrases (*e.g.*, "computer" and "system") narrows the search and shall count as a single search term. A disjunctive combination of multiple words or phrases (*e.g.*, "computer" or "system") broadens the search, and thus each word or phrase shall count as a separate search term unless they are variants of the same word. Use of narrowing search criteria (*e.g.*, "and," "but not," "w/x") is encouraged to limit the production and shall be considered when determining whether to shift costs for disproportionate discovery. Notwithstanding prior agreement on the search terms to be used for electronic searches, should a search produce an unreasonably large number of non-responsive or irrelevant results, the parties shall (at the producing party's request) meet and confer to discuss application of further negative search restrictions (*e.g.*, if a single search was for "card" and ninety percent of the resulting documents came from the irrelevant term "credit card," a negative limitation to ignore documents only returned as a result of "credit card" may be applied to remove these documents). The party receiving production shall not unreasonably oppose such further restrictions designed to filter immaterial search results. Should a party serve Email production requests with search terms beyond the limits agreed to by the parties or granted by the Court pursuant to this paragraph, this shall be considered in determining whether any party shall bear all reasonable costs caused by such additional discovery.

11. Nothing in this Order prevents the parties from agreeing to use technology assisted review and other techniques insofar as their use improves the efficacy of discovery. Such topics should be discussed pursuant to the District's E-Discovery Guidelines.

12. **Format for production of documents – documents existing in electronic format.** Except as otherwise provided for in this Stipulation, all documents existing in electronic format shall be produced in multiple page, searchable PDF format at a resolution of at least 300 dpi in accordance with the following:

1           A.     PDF files shall be produced along with Concordance/Opticon image load  
2 files that indicate the beginning and ending of each document.

3           B.     For documents which already exist in PDF format prior to production (i.e.,  
4 which the producing party receives from a client or third party in PDF format), the producing  
5 party may provide them in that same PDF format, whether searchable or non-searchable. For  
6 documents converted to PDF format prior to production, the producing party shall make  
7 reasonable efforts to convert to searchable PDF.

8           C.     **Metadata.** Load files should include, where applicable, the information  
9 listed in the Table of Metadata Fields, attached as Exhibit A. However, the parties are not  
10 obligated to include metadata for any document that does not contain such metadata in the  
11 original, if it is not possible to automate the creation of metadata when the document is collected.  
12 The parties reserve their rights to object to any request for the creation of metadata for documents  
13 that do not contain metadata in the original.

14           D.     **Production media and encryption of productions.** Unless otherwise  
15 agreed, the parties shall provide document productions in the following manner: The producing  
16 party shall provide the production data on CDs, DVDs, external hard drives, or SFTP, as  
17 appropriate. The producing party shall encrypt the production data using WinRAR encryption,  
18 and the producing party shall forward the password to decrypt the production data separately  
19 from the CD, DVD, external drive, or SFTP on which the production data is saved.

20           13.    **Format for production of documents – hardcopy or paper documents.** All  
21 documents that are hardcopy or paper files shall be scanned and produced in the same manner as  
22 documents existing in electronic format, above.

23           14.    **Source code.** This Stipulation does not govern the format for production of source  
24 code, which shall be produced pursuant to the relevant provision of the Protective Order.

25           15.    **Parent and child emails.** The parties shall produce email attachments  
26 sequentially after the parent email.

27           16.    **Native files.** The parties will meet and confer to discuss requests for the  
28 production of files in native format, on a case-by-case basis. If the parties are unable to reach

1 agreement with regard to requests for additional documents in native-file format, the parties  
2 reserve the right to seek relief from the Court. Documents produced natively shall be represented  
3 in the set of imaged documents by a slipsheet indicating the production identification number and  
4 confidentiality designation for the native file that is being produced.

5       **17. Databases.** Certain types of databases are dynamic in nature and will often  
6 contain information that is neither relevant nor reasonably calculated to lead to the discovery of  
7 admissible evidence. Thus, a party may opt to produce relevant and responsive information from  
8 databases in an alternate form, such as a report or data table. These reports or data tables will be  
9 produced in a static format.

10       The parties agree to identify the specific databases, by name, that contain the relevant and  
11 responsive information that parties produce.

12       **18. Requests for hi-resolution or color documents.** The parties agree to respond to  
13 reasonable and specific requests for the production of higher resolution or color images. Nothing  
14 in this Stipulation shall preclude a producing party from objecting to such requests as  
15 unreasonable in number, timing or scope, provided that a producing party shall not object if the  
16 document as originally produced is illegible or difficult to read. The producing party shall have  
17 the option of responding by producing a native-file version of the document. If a dispute arises  
18 with regard to requests for higher resolution or color images, the parties will meet and confer in  
19 good faith to try to resolve it.

20       **19. Foreign language documents.** All documents shall be produced in their original  
21 language. Where a requested document exists in a foreign language and the producing party also  
22 has an English-language version of that document that it prepared for non-litigation purposes  
23 prior to filing of the lawsuit, the producing party shall produce both the original document and all  
24 English-language versions. In addition, if the producing party has a certified translation of a  
25 foreign-language document that is being produced, (whether or not the translation is prepared for  
26 purposes of litigation) the producing party shall produce both the original document and the  
27 certified translation. Nothing in this agreement shall require a producing party to prepare a  
28 translation, certified or otherwise, for foreign language documents that are produced in discovery.

20. **Document preservation.** The parties shall preserve all hardcopy documents and reasonably accessible ESI relating to the issues relevant to this action. The parties shall exercise reasonable diligence to ensure that document retention notices are distributed to custodians who are likely to have relevant documents. Furthermore, the parties shall not intentionally destroy any relevant documents that they know or reasonably suspect contain relevant information. The parties shall meet and confer regarding any reasonable additional document preservation measures that may be required to ensure that relevant information is not destroyed during the pendency of this litigation.

Dated: February 12, 2016

MORRISON & FOERSTER LLP

/s/ Barbara Barath  
Barbara Barath

Attorneys for Defendant  
APPLE INC.

Dated: February 12, 2016

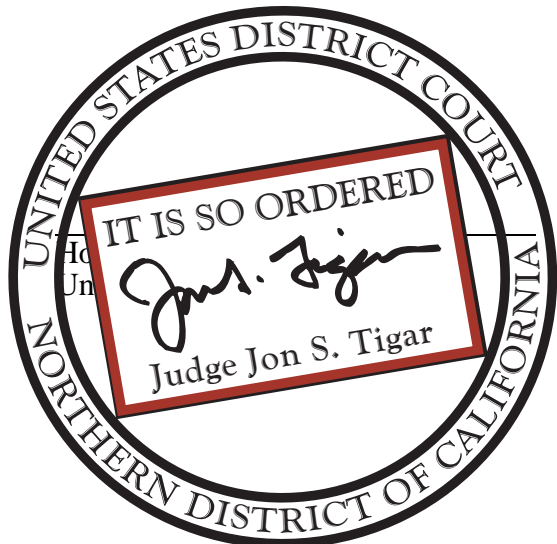
RUSS AUGUST & KABAT

/s/ Brian Ledahl  
Brian Ledahl

Attorneys for Plaintiff  
ZEROCLICK, LLC

**IT IS SO ORDERED.**

Dated: February 17, 2016



**ATTESTATION OF E-FILED SIGNATURE**

I, Barbara Barath, am the ECF User whose ID and password are being used to file this **ESI Stipulation and [Proposed] Order**. In compliance with Local Rule 5-1(i)(3), I hereby attest that Brian Ledahl has concurred in this filing.

Dated: February 12, 2016

By: /s/ Barbara Barath  
BARBARA BARATH

*Attorneys for Apple Inc.*